

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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LINCOLN GENERAL INSURANCE CO.,

Plaintiff,

Civil Action No.  
5:04-CV-1241 (FJS/DEP)

vs.

MARTIN E. SMITH, *et al.*,

Defendants.

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APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

HARRY BLACKBURN & ASSOCIATES    ANGELO J. FOGLIETTA, ESQ.  
208 Kings Highway South  
Cherry Hill, New Jersey 08034

FOR DEFENDANTS:

BOND, SCHOENECK LAW FIRM  
One Lincoln Center  
Syracuse, NY 13202-1355

THOMAS D. KELEHER, ESQ.  
BRIAN J. BUTLER, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Bond, Schoeneck & King, PLLC (Thomas D. Keleher, Esq., and  
Brian J. Butler, Esq., of counsel) has moved, pursuant to Northern District  
of New York Local Rule 83.2, for permission to withdraw as counsel of

record in this action for defendants Martin E. Smith and Lor-Mar Enterprises. Dkt. Nos. 8-10. In support of that request, counsel cites the failure of defendants to cooperate in the defense of the action and their refusal to pay invoiced fees and disbursements due and owing related to services rendered in defense of the action. See *id.* The grounds for counsel's motion are detailed in an affidavit, with exhibits, submitted to the court *ex parte* and filed under seal. Dkt. No. 10. On November 4, 2005 the court received and filed a letter from plaintiff's counsel, Angelo J. Foglietta, Esq., advising that his client did not object to the withdrawal motion. Dkt. No. 11. The court has received nothing from or on behalf of the defendants in opposition to their counsel's motion.

The pending motion, which was made returnable on November 9, 2005, has been considered based upon the submissions of the parties, without the requirement of oral argument. In light of those submissions, the court finding good cause to permit the requested withdrawal, it is hereby

ORDERED as follows:

- 1) The motion of defendants' attorneys, Bond, Schoeneck & King, PLLC (Thomas D. Keleher, Esq. and Brian J. Butler, Esq., of

counsel) for leave to withdraw as counsel of record for the defendants in this action is GRANTED.

2) Upon receipt of this order defendants' counsel shall serve it upon the defendants by first class mail, sent to their last known address, and file a certificate with the court advising that service in this manner has been accomplished.

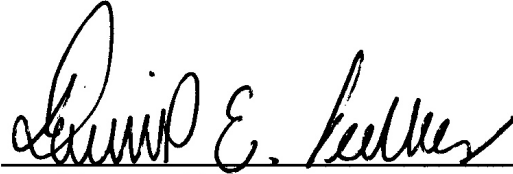
3) Within twenty days of the date of this order the defendants shall file with the court, and serve upon plaintiffs, a notice advising of the address and telephone number where they can be reached for purposes of communications with the court until such time as new counsel appears in the action.

4) This action, including all deadlines in the case, is hereby stayed until January 31, 2006.

5) Promptly upon retention of substitute counsel, and in any event on or before January 31, 2006, defendants shall notify the court and plaintiff's counsel of the identity of the new attorneys representing them, who shall promptly file an appropriate notice of appearance. In the event that the individual defendant intends to proceed in this action *pro se*, a written notice to that effect must be submitted to the court and to plaintiff's

counsel within the same time frame.

6) The clerk is directed to promptly forward copies of this order to the parties by electronic means.

A handwritten signature in black ink, appearing to read "David E. Peebles", is written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: November 8, 2005  
Syracuse, NY

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